

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al.,  
Plaintiffs,

v.

AMERICAN EXPRESS CO., et al.,  
Defendants.

Civil Action No.:  
1:10-CV-04496-NGG-RER

**NOTICE OF MOTION IN LIMINE TO EXCLUDE  
THE LITIGATION SURVEY BY DEFENDANTS'  
EXPERT KEVIN LANE KELLER, PH.D.**

PLEASE TAKE NOTICE that, upon the Memorandum of Law in Support of Plaintiffs' Motion in Limine to Exclude the Litigation Survey by Defendants' Expert Kevin Lane Keller, Ph.D., dated March 26, 2014, the accompanying Declaration of Joseph P. Vardner, dated March 26, 2014, with accompanying exhibits, and all the pleadings and papers filed with respect thereto, Plaintiffs the United States of America, the State of Arizona, the State of Connecticut, the State of Idaho, the State of Illinois, the State of Iowa, the State of Maryland, the State of Michigan, the State of Missouri, the State of Montana, the State of Nebraska, the State of New Hampshire, the State of Ohio, the State of Rhode Island, the State of Tennessee, the State of Texas, the State of Utah, and the State of Vermont hereby move this Court, before the Honorable Nicholas G. Garaufis, at the United States Courthouse for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, 11201, for an order pursuant to Rules 403 and 702 of the Federal Rules of Evidence excluding Dr. Keller's litigation survey and any expert testimony based thereon from trial.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is submitted herewith.

Dated: March 26, 2014

Respectfully submitted,

**U.S. DEPARTMENT OF JUSTICE**

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VIA ECF AND ELECTRONIC MAIL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al.,  
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v.

AMERICAN EXPRESS CO., et al.,  
Defendants.

Civil Action No.:  
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**[PROPOSED] ORDER EXCLUDING THE LITIGATION SURVEY  
BY DEFENDANTS' EXPERT KEVIN LANE KELLER, PH.D.**

WHEREAS, the Court has considered the Memorandum of Law in Support of Plaintiffs' Motion in Limine to Exclude the Litigation Survey by Defendants' Expert Kevin Lane Keller, Ph.D., dated March 26, 2014; the accompanying Declaration of Joseph P. Vardner, dated March 26, 2014, with accompanying exhibits, and all the pleadings and papers filed with respect thereto; and good cause has otherwise been shown;

IT IS HEREBY ORDERED that Plaintiffs' Motion in Limine to Exclude the Litigation Survey by Defendants' Expert Kevin Lane Keller, Ph.D. is GRANTED in its entirety; and

IT IS HEREBY FURTHER ORDERED that Defendants shall be precluded from presenting Dr. Keller's litigation survey or its results at trial; and

IT IS HEREBY FURTHER ORDERED that Defendants shall be precluded from presenting expert testimony at trial that is based on Dr. Keller's litigation survey or its results.

SO ORDERED:

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HON. NICHOLAS G. GARAUFIS  
UNITED STATES DISTRICT JUDGE

Dated: Brooklyn, N.Y.

\_\_\_\_\_, 2014